

OGC 70-1349

7 August 1970

MEMORANDUM FOR: Legislative Counsel

SUBJECT: Joint Committee on Intelligence

1. The current resolution to establish a Joint Committee on Intelligence poses serious jurisdictional concerns as between a number of standing committees of the Congress. The resolution provides that the Joint Committee should be kept fully and currently informed with respect to activities of the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, the Bureau of Intelligence and Research of the Department of State, Army Intelligence, Navy Intelligence, Air Force Intelligence, and any other services engaged in foreign intelligence activities.

2. Furthermore, the resolution goes on to provide that all bills, resolutions and other matters in the Senate or House of Representatives related primarily to the above enumerated agencies or to any other agency engaged in foreign intelligence activities shall be referred to the Joint Committee on Intelligence. The Central Intelligence Agency is the only independent agency referred to. All other agencies and functions are parts of other departments. Normally, legislation related to the Defense Intelligence Agency, National Security Agency and the three military intelligence services would be considered by the two Armed Services Committees. Will those two Committees be willing to give up jurisdiction over a part of the Department of Defense? One can well argue that functionally the Armed Services Committees can only properly do their jobs with respect to the Department of Defense by retaining legislative oversight over the entire Department of Defense. Similar arguments can be made with respect to Senate Foreign Relations and House Foreign Affairs with respect to the Bureau of Intelligence and Research of the Department of State. The Atomic Energy Commission has an intelligence responsibility and has a representative on the

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United States Intelligence Board. Is it reasonable to expect that the Joint Committee on Atomic Energy would willingly give up jurisdiction over a part of the Atomic Energy Commission? The Federal Bureau of Investigation has a representative on the United States Intelligence Board and a similar question can be raised with respect to the two Judiciary Committees.

3. All of the intelligence activities which the proponents of a Joint Committee on Intelligence would seek to bring under the cognizance of a Joint Committee on Intelligence are currently supervised by existing standing committees. Thus, the proponents of a new Joint Committee on Intelligence would appear to be in the position of arguing that the existing standing committees are not adequately fulfilling their responsibilities for these activities. The burden would appear to fall on the Joint Committee on Intelligence to demonstrate that this is so.

4. The Joint Committee Resolution provides that two members of the proposed Joint Committee on Intelligence, one House member and one Senate member, shall be appointed by the chairman to serve, at the invitation of the President, as representatives to, and non-voting members of, the United States Intelligence Board. This is a novel concept and would appear to be inconsistent with the existing concepts of separation of powers between the executive branch and the congressional branch. The United States Intelligence Board was established by the National Security Council under the chairmanship of the Director of Central Intelligence. Its responsibilities are to advise and assist the Director of Central Intelligence, as he may require, in the discharge of his statutory responsibilities. The United States Intelligence Board thus is strictly an executive branch group to advise and assist the head of an independent agency in the Executive Office of the President. To place two members of Congress as representatives to such a Board is inappropriate. The President should be granted the greatest latitude and freedom of action in organizing those mechanisms which provide intelligence to him on the basis of which he can formulate foreign policy. To insert members of Congress in these mechanisms thus appears to be violative of the basic concepts of separation of powers.

/s/ John S. Warner

JOHN S. WARNER
Deputy General Counsel

cc: D/DCI/NIPE
DDP

✓OGC Subject - LEGISLATION

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